

Policy and Procedure for Protected Health Information of Un-emancipated Minors

45 CFR 164.502(g); 45 CFR Part 5b

PURPOSE: To establish the policy and procedure for disclosing and providing access to protected health information (PHI) of un-emancipated minors under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Part 164; Privacy Act of 1974, 5 USC 552a; Privacy Act Regulations, 45 CFR Part 5b; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2; and the applicable law in the State in which the treatment is provided.¹

POLICY: The Health Information Management (Health Records) Director or designee shall be responsible for determining whether or not to release the PHI of an un-emancipated minor to the minor or to the minor's parent or guardian. In all cases, whether a patient is a minor and whether a minor is emancipated shall be determined by the law of the state in which the treatment is provided.

PROCEDURES: The following procedures will govern how health information of un-emancipated minors will be disclosed:

A. Requests by un-emancipated minors

1. A minor who requests access to his/her medical record shall, at the time of the request, designate a representative in writing (*e.g.*, physician or other health representative or responsible person), who would be willing to review the record and inform the minor of its contents.

2. Upon receipt of request and designation of a representative, the Responsible Department Official (I.E. MEDICAL RECORDS DIRECTOR) reviews the request to determine whether direct access will have an adverse effect on the minor. The minor will be granted direct access to his/her medical record if the Responsible Department Official determines that direct access is not likely to have an adverse effect on the minor.

3. If the Responsible Department Official believes s/he is not qualified to determine, or has determined, that access by the minor is likely to have an adverse effect on the minor, the record will be sent to the designated representative. The minor will be informed in writing that the record has been sent. The minor will be allowed access to his or her record consistent with a determination by the Responsible Department Official of the manner of disclosure, if any, that would limit any likely adverse effect on the minor.

¹ Some tribes and municipalities may have statutes and ordinances governing disclosure and access to minors' medical records. There may also be applicable case law. References to state law regarding disclosure and access include these other applicable laws. If it is unclear which law applies, consult your regional attorney.

B. Requests by a parent, guardian, or individual acting *in loco parentis*

1. At the time of request, the parent, guardian, or individual acting *in loco parentis*, shall designate in writing a health professional (other than a family member) to whom any records will be sent.
2. Where a health record on an un-emancipated minor exists, it will be sent to the designated health professional. However, if the parent, guardian, or individual acting *in loco parentis* had consented to the treatment documented in the health record being requested, then the parent may have direct access to such PHI in accordance with the Privacy Rule and the Privacy Act under IHS Routine Use 14. Access to records of alcohol and substance abuse treatment is covered by 42 CFR Part 2.
3. If the disclosure of the record would constitute an invasion of the minor's privacy, that fact will be brought to the attention of the designated health professional who will be asked to consider the effect that disclosure of the record to the parent, guardian, or individual acting *in loco parentis* would have on the minor in determining whether the record should be made available to the parent, guardian, or individual acting *in loco parentis*.
4. In cases in which the minor's record is sent to the designated health professional, the requestor will be notified of this action, and reasonable efforts will be made to inform the minor.
5. Where the law of the State in which the treatment is provided prohibits disclosure of a minor's PHI to the parent, guardian, or individual acting *in loco parentis* of the minor, IHS shall not disclose the minor's PHI to the parent, guardian, or individual acting *in loco parentis*.
6. Where the law of the State in which the treatment is provided permits or requires disclosure of a minor's PHI to the parent, guardian, or individual acting *in loco parentis* of the minor, or there is no state law, IHS may disclose the minor's PHI to the parent or guardian, or individual acting *in loco parentis* following the above procedures, unless:
 - The parent, guardian, or individual acting *in loco parentis* lacks authority to act on behalf of the minor (for example, where parental rights have been terminated);
 - A physician or health professional determines in writing that disclosure of the PHI to the parent, guardian, or individual acting *in loco parentis* would constitute an unwarranted invasion of the minor's privacy, there is a reasonable belief that such disclosure might endanger or cause harm to the minor, or such disclosure would otherwise not be in the best interest of the minor;

- The minor has consented to a health care service for which parental consent is not required under the law of the State in which the treatment is provided, and the minor has not requested that the parent, guardian, or individual acting *in loco parentis* be treated as his personal representative; or
- The parent, guardian, or individual acting *in loco parentis* agrees to an agreement of confidentiality between IHS and the minor. Such an agreement should be documented in the minor's health record; or
- The Privacy Act otherwise prohibits the disclosure.

C. Requests by Other Third Parties

1. Subpoena/Court Order: Upon receipt of a subpoena/court order for a minor's health record, the Area Health Records Consultant must be consulted before any release is made.
2. Law Enforcement: Requests from law enforcement will be accomplished pursuant to the requirements of the law enforcement exception contained in the Privacy Act, 5 USC § 552a (b)(7) and the HIPAA Privacy Rule, 45 CFR § 164.512 (f)(1)(ii)(C).
3. Law Firms or Insurance Companies: An original signed authorization by the minor patient must accompany the request. An authorization from the parent or legal guardian will not be accepted. If the parent or legal guardian wishes to disclose health records to a third party (*e.g.*, attorney or insurance company), then the parent or legal guardian must request access to the minor's health record following the procedures in section B, above. Upon the receipt of the minor's health record, the parent or guardian may disclose it to the third party. Records of alcohol and substance abuse treatment are covered by 42 CFR Part 2.
4. Medical Examiners may access relevant health information about deceased minors necessary for the performance of their duties as required by law.

D. Content and Documentation of Requests for Access or Disclosure

1. All requests must contain the following:
 - (a) Original signature of the minor patient and/or the parent or guardian, as appropriate;
 - (b) Date of signature;
 - (c) Description of information requested; and
 - (d) Purpose of the disclosure.

Note: Although a state law may permit a parent or guardian to have *access* to an un-emancipated minor's health record, the Privacy Act prohibits a parent or guardian to authorize a *disclosure* by IHS of an un-emancipated minor's health record to a third party (see C.3 above).

2. The original authorization or written request will be filed in the minor patient's health record. See the Policy and Procedures for Authorization for Use or Disclosure of Protected Health Information.
3. The information released will be documented in the accounting of disclosure log either manually or electronically (Release of Information software package). See the Policy and Procedures for Matters Related to Accountings of Disclosures of Protected Health Information for guidance.
4. All requests for notification or access to a minor's record will comply with the Policy and Procedures on Verification of Identity Prior to Disclosure of Protected Health Information.

E. Procedures Governing Access to/Disclosure of a Minor's Alcohol/Drug Abuse Records

1. If state law does not require parental or guardian consent for the minor to receive alcohol/drug abuse treatment, written authorization for disclosure may be given by, and access may be provided to, the minor patient only.
2. If state law requires the parent, guardian, or other person authorized by law to consent for the minor to receive alcohol/drug abuse treatment, written authorization for disclosure of the minor's records must be given by both the minor and the parent/guardian or other person authorized under State law to act on behalf of the minor patient.
3. Where state law requires parental consent to alcohol/drug abuse treatment, a minor's application for such treatment may be communicated to the parent, guardian, or other authorized person only if: (i) the minor has given written consent to the disclosure of the application; or (ii) the minor lacks the capacity to make a rational choice regarding such consent (*e.g.*, due to extreme youth or mental or physical condition).
4. Alcohol/drug abuse records may only be disclosed pursuant to the minor patient's authorization (and/or authorization of parent or guardian as determined by State law), unique Federal court orders, and in other limited circumstances. Such records shall NOT be disclosed pursuant to a law enforcement request. Any requests for disclosure of a minor's alcohol/drug abuse records should be reviewed in consultation with the Regional Counsel's Office.